

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM SCOTT MILLER,

Defendant-Appellant.

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UNPUBLISHED

June 3, 2008

No. 277153

Oakland Circuit Court

LC No. 2006-212297-FC

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of assault with intent to commit murder, MCL 750.83, carrying a concealed weapon, MCL 750.227, and carrying a dangerous weapon with unlawful intent, MCL 750.226.<sup>1</sup> We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The victim, Deshawn Wilson, testified that defendant assaulted him as he walked to a friend's home after work. As he walked down Eight Mile Road, defendant and another man approached down a side street and began to walk behind him. Wilson became nervous as they continued to follow him and asked the pair whether they knew the time. They replied that they did not. Wilson and the men made "small talk" as the three continued to walk. However, a few minutes later, defendant grabbed Wilson around the neck from behind in a choke hold. Wilson was then struck in the forehead above his eye. Wilson was hit again, and defendant pulled him to the ground. As Wilson tried to roll away, defendant stabbed Wilson twice in his right shoulder, twice in his left shoulder, once in his right upper arm, once in his left upper arm, once

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<sup>1</sup> Initially, defendant also challenged the trial court's failure to hold a hearing to resolve a dispute concerning the proper amount of restitution, MCL 780.767(4), and its decision to assess attorney fees without determining defendant's ability to pay. See *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004). This Court granted defendant's motion to remand as to these issues, and retained jurisdiction. However, defendant has now withdrawn those objections, stating that the trial court has resolved them.

in his right lower back, and once on his right buttock. Wilson also suffered a “gash” wound on his neck. After approximately one and one-half minutes, defendant and the other man ran away.

Defendant argues that the prosecution presented insufficient evidence to support his conviction for assault with intent to murder. We disagree.

We review a defendant’s allegations regarding insufficiency of the evidence *de novo*. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* However, we will not interfere with the jury’s role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

To prove assault with intent to murder, the prosecution must show that defendant committed: “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). Defendant argues that the prosecutor failed to show that defendant had the specific intent to kill the victim. However, because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The necessary actual intent to kill may be proved by “‘the nature of the defendant’s acts constituting the assault; the temper or disposition of mind with which they were apparently performed, whether the instrument and means used were naturally adapted to produce death, [the defendant’s] conduct and declarations prior to, at the time, and after the assault, and all other circumstances calculated to throw light upon the intention with which the assault was made.’” *People v Taylor*, 422 Mich 554, 568; 375 NW2d 1 (1985), quoting *Roberts v People*, 19 Mich 401, 416 (1870).

Here, given the circumstances surrounding the assault, we find that a reasonable trier of fact could infer that defendant intended to kill the victim when assaulting him. Defendant repeatedly stabbed the victim, who was unarmed, in the upper and lower back, and other places, with a weapon having the ability to cause death. Defendant also admitted during police questioning that he “lost it” during the assault. He left Wilson bleeding on the sidewalk. A reasonable jury could infer from defendant’s actions and the severity of the victim’s injuries that defendant intended to kill the victim. The prosecution presented sufficient evidence to support the conviction for assault with intent to commit murder.

Defendant additionally argues, in *propria persona*, that he was denied effective assistance of counsel for a variety of reasons, all generally based on an argument that his theory of the case was not properly presented to the jury. We disagree. Defendant’s theory of the case was “that he did not intend to kill because there was [sic] mitigated [sic] circumstances which [sic] can serve to defeat criminal liability by negating an element of the offense, which is the mitigated

malice.” Defendant states that his father had been attacked and stabbed shortly before the assault at issue, resulting in paranoia on his part; he had just left a confrontation with his girlfriend; and he was young and intoxicated. He concludes that his father should have been presented as a witness, and the jury should have been instructed regarding the kind of “reasonable provocation” that would, in the event of death occurring, reduce murder to voluntary manslaughter, CJI2d 17.4. However, the “reasonable provocation” necessary to negate the specific intent to kill requires such an overwhelming provocation that a reasonable person would lose the ability to control his or her acts, with *no lapse of time* within which such a reasonable person could regain control. *Maier v People*, 10 Mich 212, 219-220 (1862); *People v Pouncey*, 437 Mich 382, 388-389; 471 NW2d 346 (1991). Nothing in defendant’s assertions of fact suggests that the assault here was precipitated by such an overwhelming provocation so shortly beforehand that a reasonable person could not “cool off,” and indeed the rest of the evidence suggests the contrary.

Affirmed.

/s/ Alton T. Davis  
/s/ Christopher M. Murray  
/s/ Jane M. Beckering